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OFFICE OF PETITIONS

In re Application of :
Lim et al. : DECISION ON PETITION TO
Application No. 09/840,082 : WITHDRAW HOLDING OF
Filed: 24 April, 2001 : ABANDONMENT
Attorney Docket No. 049128-5006 :

This is a decision on the petition filed on 20 December, 2006, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely reply to the Decision of the Board of Patent Appeals mailed on 25 August, 2006, which set a two (2)-month statutory period for reply. Notice of Abandonment was mailed on 3 November, 2006.

Petitioners assert that the Board Decision mailed on 25 August, 2006, was never received.

In the absence of any irregularity in the mailing of the Board Decision, there is a strong presumption that the Board Decision was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Board Decision was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion

that the Board Decision may have been lost after receipt rather than a conclusion that the Board Decision was lost in the mail.

A review of the record indicates that the Board Decision was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Board Decision on the part of the United States Patent and Trademark Office.

In support, the petition includes a statement from the practitioner, Robert J. Goodell, stating that the Board Decision was not received by the practitioner, and attesting to the fact that a search of the application file and the docket records indicates that the Board Decision action was not received. A copy of counsel's docket report where the non-received Board Decision would have been entered had it been received and docketed is attached.

The petitioner has made a sufficient showing of nonreceipt of the Board Decision. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is GRANTED.

It is noted that applicant has filed a Request for Continued Examination and a submission under 37 CFR 1.114 in reply to the Board Decision mailed on 25 August, 2006, with the present petition. As such, remailing of the Board Decision is not necessary, and the Board Decision will not be remailed.

The application file is being referred to Technology Center Art Unit 2871 for consideration of the RCE and submission.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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